

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Leilani Rhodes	Team: Squad #9	CCRB Case #: 201904045	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 05/02/2019 4:48 PM	Location of Incident: 745 East 152nd Street	Precinct: 40	18 Mo. SOL 11/2/2020	EO SOL 6/19/2021	
Date/Time CV Reported Fri, 05/10/2019 1:55 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Fri, 05/10/2019 1:55 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Steven Counihan	4669	952620	PSA 7
2. An Officer			PSA 7

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Pedro Silverio	00829	966850	PSA 7
2. POM Fatmir Gjonbalaj	31476	952785	PSA 7
3. POM Joseph Martinez	10535	947221	PSA 7
4. POF Lauren Amin	11367	961615	PSA 7
5. POF Heidi Morillоторres	02288	965806	040 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Steven Counihan	Abuse: Sergeant Steven Counihan stopped the vehicle in which § 87(2)(b) was an occupant.	
B.SGT Steven Counihan	Force: Sergeant Steven Counihan used physical force against § 87(2)(b)	
C.SGT Steven Counihan	Abuse: Sergeant Steven Counihan threatened § 87(2)(b) with the use of force.	
D. An Officer	Abuse: An officer damaged § 87(2)(b)'s property.	

## Case Summary

On May 10, 2019, § 87(2)(b) filed this complaint in-person with the CCRB.

On May 2, 2019, at approximately 4:48 p.m., § 87(2)(b) was pulled over by Sgt. Steven Counihan and PO Pedro Silverio from PSA 7 in front of 745 East 152nd Street in the Bronx (**Allegation A, Abuse of Authority:** § 87(2)(g) § 87(2)(b) Sgt. Counihan repeatedly asked § 87(2)(b) for his driver's license, registration and insurance information and § 87(2)(b) refused to provide the information. While attempting to handcuff § 87(2)(b) Sgt. Counihan allegedly hit § 87(2)(b) in the lip with an unknown body part, causing an injury to his lip. (**Allegation B, Force:** § 87(2)(g) § 87(2)(b) Sgt. Counihan told § 87(2)(b) "Get off the phone or I'm taking you out of the car," and "Give me your license and registration or I'm taking you out of the car." He also stated, "Step out of the car or you're gonna get tased" (**Allegation C, Abuse of Authority:** § 87(2)(g) § 87(2)(b) § 87(2)(b) was ultimately arrested for Obstruction of Governmental Administration as a result of this incident (Board Review 09). PO Fatmir Gjonbalaj drove § 87(2)(b)'s car to the stationhouse, and § 87(2)(b) noticed that his car had scrapes to his back brake light and front left light, and that his emergency brake was bent (**Allegation D, Abuse of Authority:** § 87(2)(g) § 87(2)(b)).

Eight body worn cameras videos have been obtained in regards to this incident (Board Reviews 5,6,13,15-19).

## Findings and Recommendations

**Allegation (A) Abuse of Authority: Sergeant Steven Counihan stopped the vehicle in which § 87(2)(b) was an occupant.**

It is undisputed that § 87(2)(b) was swerving while driving his vehicle.

§ 87(2)(b) acknowledged swerving his vehicle as he was driving, stating that when driving in the Bronx, "You are going to need to move your car in a wiggling motion, looking like you're swerving to dodge these potholes." He stated that he was doing this at a slow pace prior to being pulled over (Board Review 01).

§ 87(2)(b), § 87(2)(g)

**Allegation (B) Force: Sergeant Steven Counihan used physical force against § 87(2)(b)**

**Allegation (C) Abuse of Authority: Sergeant Steven Counihan threatened § 87(2)(b) with the use of force.**

It is undisputed that § 87(2)(b) was actively resisting arrest by attempting to flee his vehicle from the passenger's side window.

Sgt. Counihan's body worn camera video, located in IA #22 shows the incident from when Sgt. Counihan first approached § 87(2)(b)'s vehicle to when § 87(2)(b) jumped into the

passenger's seat of his vehicle. At 0:33 in the video, Sgt. Counihan informed § 87(2)(b) that he made a dangerous lane change and did not signal. § 87(2)(b) denied doing so and refused to provide his license, registration and insurance as requested by Sgt. Counihan. § 87(2)(b) put his cell phone to his ear and seemed to be speaking to someone. At 1:04 in the video, Sgt. Counihan told § 87(2)(b) "Get off the phone or I'm taking you out of the car" and "Give me your license and registration or I'm taking you out of the car." Sgt. Counihan asked § 87(2)(b) for his license and registration a total of five times. § 87(2)(b) refused to provide the information each time. Sgt. Counihan then opened the driver's side door and told § 87(2)(b) to step out of his car five times, in which he refused. Sgt. Counihan then took his handcuffs out and held them in his right hand as he stated, "Give me your hand" and stretched his left arm into § 87(2)(b)'s vehicle to grab § 87(2)(b)'s right wrist. § 87(2)(b) repeatedly yelled, "Do not touch me" while leaning his right shoulder into the passenger's seat and moving his right arm back to prevent Sgt. Counihan from grabbing him. At this point Sgt. Counihan's body worn camera is showing § 87(2)(b)'s lap and it is unclear what is taking place. At 2:17 in the video, § 87(2)(b)'s feet are then seen moving into the passenger's seat of his vehicle as Sgt. Counihan states, "Step out of the car or you're gonna get tased" (Board Review 06). At 00:35 in Sgt. Counihan's second body worn camera video, § 87(2)(b) told Sgt. Counihan, "You busted my lip." At this time, § 87(2)(b) was handcuffed as Sgt. Counihan was searched his pockets. At 00:37 in the video, Sgt. Counihan responded, "No one busted your lip" (Board Review 13).

§ 87(2)(b) stated that Sgt. Counihan hit his lower lip with a body part, causing a cut and swelling to the inside of his lip. § 87(2)(b) did not know which body part Sgt. Counihan hit him with. (Board Review 01).

Sgt. Counihan testified that, although he tried, he could not grab § 87(2)(b) or prevent him from moving his body out of the passenger's side window. Sgt. Counihan denied causing an injury to § 87(2)(b)'s lip and did not notice any bruising or significant injury. He stated that he later noticed redness on the inside of his lip but it did not appear to be swollen (Board Review 03).

According to Patrol Guide Procedure 221-01, "Force may be used when it is reasonable to ensure the safety of a member of service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody." It also permits MOS to use the "reasonable force necessary to gain control or custody of a subject" (Board Review 07). Patrol Guide Procedure 221-08 states that a Conducted Energy Weapon (CEW) or "Taser" should only be used against persons who are actively resisting, exhibiting active aggression, or to prevent individuals from physically injuring themselves or other person(s) present (Board Review 08).

§ 87(2)(b) refused to provide his license, registration, and insurance information after being told to do so five times by Sgt. Counihan. § 87(2)(b) then resisted arrest by attempting to flee his vehicle through the passenger's side window. According to the Patrol Guide Procedures listed above, § 87(2)(b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(g)

**Allegation (D) Abuse of Authority: An officer damaged § 87(2)(b)'s property.**

It is undisputed that PO Gjonbalaj transported § 87(2)(b)'s vehicle to the stationhouse.

§ 87(2)(b) stated that when his vehicle was returned to him, there were scrapes to his back right tail light and his front right head light. He also noticed that his emergency brake lever was bent. He stated that the damage was not there before the incident. § 87(2)(b) did not provide any photographs of the alleged damage (Board Review 01).

PO Gjonbalaj stated that he did not notice any damage to the car before transporting it or after he arrived at the stationhouse. He stated that he did not cause any damage to § 87(2)(b)'s vehicle. He had no knowledge of any damage to the back right tail light, front right headlight, or the emergency break. He stated that he did not use the emergency break at any point while transporting § 87(2)(b)'s vehicle to the stationhouse (Board Review 02).

PO Gjonbalaj's body worn camera video, located in IA #24 depicts the incident from when he arrived at the incident location, to when he drove § 87(2)(b)'s vehicle to the stationhouse. At 3:40 in the video, he begins driving the vehicle. The video shows a view of PO Gjonbalaj's hand on the steering wheel as he drove § 87(2)(b)'s vehicle. At 8:15 in the video, PO Gjonbalaj arrives at the stationhouse and parks behind an NYPD van. PO Gjonbalaj then got out of the vehicle. The video does not depict PO Gjonbalaj causing any damages to § 87(2)(b)'s vehicle or any pre-existing damages to § 87(2)(b)'s vehicle (Board Review 05).

Although it is undisputed that PO Gjonbalaj transported § 87(2)(b)'s vehicle to the stationhouse, his body worn camera does not show him taking any actions that would have caused the alleged damage. § 87(2)(b), § 87(2)(g)

**Civilian and Subject Officer CCRB Histories**

- § 87(2)(b)  
§ 87(2)(b)  
■ § 87(2)(b)  
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■ § 87(2)(b)
- Sgt. Counihan has been a member of service for seven years and has been a subject in two CCRB complaints and four allegations, none of which were substantiated.

**Mediation, Civil, and Criminal Histories**

- § 87(2)(b) rejected mediation.
- § 87(2)(b)  
[REDACTED]  
[REDACTED]  
[REDACTED]
- As of October 2, 2019, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this complaint (Board Review 12).

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Squad No.: \_\_\_\_\_

Investigator: \_\_\_\_\_

Signature	Print Title & Name	Date
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Squad Leader: \_\_\_\_\_

Signature	Print Title & Name	Date
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Reviewer: \_\_\_\_\_

Signature	Print Title & Name	Date
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